

APR 10 2006

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

**CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS**

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

MATTHEW REED OLSEN,

Defendant - Appellant.

No. 04-10437

D.C. No. CR-03-00113-HDM

MEMORANDUM*

Appeal from the United States District Court
for the District of Nevada
Howard D. McKibben, District Judge, Presiding

Submitted April 5, 2006**

Before: HAWKINS, McKEOWN, and PAEZ, Circuit Judges.

Matthew Reed Olsen appeals the 30-month sentence imposed following his guilty plea to being a felon in possession of a firearm and forfeiture in violation of 18 U.S.C. §§ 922(g)(1) and 924(a)(2) and 924(d) and 28 U.S.C. § 2461(c). We

* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

** This panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

have jurisdiction under 28 U.S.C. § 1291.

We reject Olsen's contention that the district court violated his Sixth Amendment rights by finding that his prior conviction by guilty plea under Nevada Revised Statute § 453.337 categorically qualifies as a controlled substance offense. *See United States v. Von Brown*, 417 F.3d 1077, 1078-79 (9th Cir. 2005); *see also United States v. Benitez-Perez*, 367 F.3d 1200, 1204 (9th Cir. 2004).

However, as Olsen was sentenced at a time when the Sentencing Guidelines were mandatory and they are now advisory, a limited remand pursuant to *United States v. Ameline*, 409 F.3d 1073, 1084-85 (9th Cir. 2005) (en banc), is warranted. *See United States v. Moreno-Hernandez*, 419 F.3d 906 (9th Cir. 2005).

REMANDED.